

# Participation Terms

These Ten-X Participation Terms ("Terms") apply to each auction or other marketing or transaction event (each, an "Event") conducted by Ten-X, LLC or one of its subsidiaries ("Ten-X") on behalf of a seller (each, a "Seller") of real property or secured note(s) (each, a "Property", and collectively, "Properties"). As used in these Terms, each prospective buyer who participates in any Event is a "Participant". As used in these Terms, the terms "Ten-X", "Seller" and "Participant" also refer to the respective principals, agents, and affiliates of each. "Winning Buyer" is the Participant that (a) submits the highest net bid in an auction Event and is acknowledged by Ten-X by email or telephone as the winning bidder, or (b) submits any offer during any Event that is accepted by Seller. As used in these Terms, each bid or offer submitted in any Event is an "Offer".

Ten-X conducts Events solely on behalf of Seller, and is not acting as an agent for any Participant in any capacity. By registering for an Event or submitting an Offer at [www.ten-x.com](http://www.ten-x.com) or any other website ("Website") owned by CoStar Group, Inc. or one of its subsidiaries (collectively, "CS Group"), Participant acknowledges having read and accepted these Terms. By submitting an Offer on a Property, Participant is deemed to have accepted any additional terms and conditions posted on the Property's details page on the Website ("Property Page") at the time the Offer was submitted, and such terms and conditions govern and control over these Terms to the extent of any conflict.

Ten-X's Website Terms of Use ([www.ten-x.com/company/legal/terms](http://www.ten-x.com/company/legal/terms)) and Privacy Statement ([www.ten-x.com/company/legal/privacy](http://www.ten-x.com/company/legal/privacy)) are incorporated into these Terms by reference.



## 1. ACCOUNT CREATION AND REGISTRATION PROCESS

Participants must have an account on the Website in order to participate in any Event.

Some Events may also require Event-level registration and, as part of that registration process, Participants may be required to place a deposit to secure compliance with these Terms ("Participation Deposit"). The amount of the Participation Deposit (if any) and acceptable deposit methods will be shown during registration.

Winning Buyer's Participation Deposit (if any) may be applied towards the required "Earnest Money Deposit" (defined below), unless the Participation Deposit was made by a credit card hold, in which case such hold will be released after confirmation that the "Purchase Documents" (defined below) have been fully signed and the Earnest Money Deposit has been timely received. All Participation Deposits from Participants other than Winning Buyer will be released after the Event.

Ten-X may modify, waive, or impose additional participation requirements for certain Properties or Participants in its sole and absolute discretion or at the request of Seller.

## 2. DUE DILIGENCE

Purchase Documents. Prior to submitting an Offer, Participants must review the purchase and sale agreement, any applicable addenda, Seller's disclosure documentation, and all other transaction documents (collectively, "Purchase Documents"), which can be accessed on the Property Page. All Offers must be based on the posted Purchase Documents. The Purchase Documents are non-negotiable.

Due Diligence. It is each Participant's responsibility to conduct its own due diligence and investigate all matters relating to each Property that Participant is interested in purchasing, including, without limitation, legal matters, physical condition and attributes,

environmental matters, economic matters, encumbrances, and all other aspects. Participant must coordinate any such inspection with Seller or Seller's broker. Participants must submit Offers at their own risk regardless of whether Participant has physically inspected the Property. All Offers should be based solely on Participant's independent due diligence and any information contained in the Purchase Documents.

Property information has been gathered from a variety of sources and has not been independently verified by Ten-X or CS Group. Participants are encouraged to consult with a licensed real estate broker, contractor, attorney, financial advisor, tax advisor, and other relevant professionals.

Participant is responsible for all liability, damages and costs directly or indirectly arising from Participant's inspection, visit, or investigation of the Property. Participant agrees to indemnify, defend and hold harmless Seller, Ten-X and CS Group from any such liability, damages and costs, and to maintain all applicable policies of insurance insuring over such liability, damages and costs.

### 3. BUYING

Irrevocability of Offers. All Offers submitted during any Event are irrevocable, except where an Offer withdrawal option is expressly made available to Participants through the Website.

Signing Purchase Documents. The final Purchase Documents will be emailed to Winning Buyer for electronic signature using the email address associated with Winning Buyer's Website account. Winning Buyer must sign the Purchase Documents within two hours after they are sent to Winning Buyer (unless a longer timeframe is specified in writing by Ten-X), time being of the essence. If Winning Buyer fails to timely sign the Purchase Documents, (a) Ten-X may declare Winning Buyer to be in default of these Terms, (b) Seller may reject Winning Buyer's Offer, and/or (c) Seller may declare Winning Buyer to be in default of the Purchase Documents and pursue claims against

Winning Buyer for specific performance, payment of the "Earnest Money Deposit" (defined below), and all other remedies available at law; Seller is an express, intended, third party beneficiary of the foregoing clauses (b) and (c).

**Payment of Earnest Money Deposit.** The Purchase Documents for each Property require Winning Buyer to pay a deposit to the escrow/closing agent ("Earnest Money Deposit"). The amount of the Earnest Money Deposit is specified in the Purchase Documents or the Property Page for each Property. Unless otherwise specified in the Purchase Documents, the Earnest Money Deposit must be received no later than 5:00 PM in the time zone where the Property is located on the first business day after Winning Buyer is notified that Seller has countersigned the Purchase Documents, time being of the essence. If the Earnest Money Deposit is not timely received, Ten-X or Seller may declare Winning Buyer to be in default of these Terms and Seller may reject Winning Buyer's Offer.

**Proof of Funds and Additional Information.** Ten-X or Seller may require Participants to provide proof of readily available funds or additional information at any time prior to registration approval, submission of an Offer, or acceptance of an Offer. If Ten-X or Seller requires Winning Buyer to provide proof of funds or additional information and such proof of funds or additional information is not timely received, Ten-X or Seller may reject Winning Buyer's Offer.

**Entity Buyers.** Winning Buyers wanting to take title in the name of an entity may be required to provide entity formation documents and resolutions authorizing the purchase within the timeframe specified by Ten-X, which may be before or after the Event, in Ten-X's sole discretion. Seller or the escrow/closing agent may require additional documentation prior to closing.

**Transaction Fee.** If the Property Page for a Property states that a buyer's premium or transaction fee ("Transaction Fee") applies to the sale, then Winning Buyer will be required to pay the Transaction Fee in addition to Winning Buyer's Offer amount at closing. Unless otherwise

OR INJURY RESULTING FROM OR RELATING TO ANY ERRORS, OMISSIONS OR OTHER CONDITIONS AFFECTING ANY PROPERTY, THE DOCUMENTS USED IN EVALUATING OR ACQUIRING ANY PROPERTY, OR THE CONDUCTING OF ANY EVENT. THIS RELEASE INCLUDES CLAIMS OF WHICH PARTICIPANT IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN PARTICIPANT'S FAVOR WHICH, IF KNOWN BY PARTICIPANT, WOULD MATERIALLY AFFECT PARTICIPANT'S RELEASE OF TEN-X AND CS GROUP. EACH PARTICIPANT SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (AND OTHER SUBSTANTIALLY SIMILAR APPLICABLE STATE STATUTES) WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**CANCELLATION; LIQUIDATED DAMAGES.** IF WINNING BUYER BREACHES THESE TERMS, WINNING BUYER'S OFFER MAY BE REJECTED BY TEN-X OR SELLER, THE PROPERTY MAY BE IMMEDIATELY SOLD TO ANOTHER PARTICIPANT OR PLACED IN ANOTHER EVENT, AND WINNING BUYER WILL BE RESPONSIBLE FOR PAYING TEN-X LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO (A) THE AMOUNT OF THE PARTICIPATION DEPOSIT SHOWN AT THE TIME OF REGISTRATION (WHETHER OR NOT WINNING BUYER ACTUALLY MADE SUCH PARTICIPATION DEPOSIT), OR (B) IF NO PARTICIPATION DEPOSIT WAS SHOWN AT THE TIME OF REGISTRATION, 2% OF WINNING BUYER'S OFFER FOR THE PROPERTY. IF WINNING BUYER MADE A PARTICIPATION DEPOSIT BY CREDIT CARD HOLD, TEN-X IS AUTHORIZED TO CHARGE THE CREDIT CARD IN THE AMOUNT OF SUCH HOLD TO SATISFY ALL OR PART OF THE LIQUIDATED DAMAGES OWED BY WINNING BUYER. WINNING BUYER ACKNOWLEDGES THAT THE ACTUAL DAMAGES RESULTING FROM WINNING BUYER'S BREACH OF THESE TERMS WOULD BE DIFFICULT AND IMPRACTICAL TO CALCULATE, AND THAT THE LIQUIDATED DAMAGES AMOUNT SET



each Event shall be governed by the laws of California.

Ten-X may place Offers on behalf of Participants in accordance with their instructions. Ten-X is not responsible for failing to place any such Offer or for any errors that may occur during the placement of any such Offer.

Any information on any website, in any brochure, e-mail, or postcard, and any information available regarding the Properties shall not constitute an offer to sell or a solicitation of any offer to buy any of the Properties. Offers submitted or solicitations made during any Event are void where prohibited by law. If any sale would require registration or qualification under applicable state securities laws, no such sale may be consummated until such applicable requirements have been met.

As between Seller and Participant, no obligation to sell shall be binding on Seller unless and until the Purchase Documents have been signed and delivered by Seller and the Earnest Money Deposit has been received as required hereunder. After the Purchase Documents have been fully signed, the Purchase Documents shall govern the relationship between Winning Buyer and Seller.

## **7. DISCLAIMERS; PARTICIPANT REPRESENTATIONS;**

### **CANCELLATION; LIQUIDATED DAMAGES**

NEITHER TEN-X NOR CS GROUP MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY, OR THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES OF ANY DOCUMENT PROVIDED BY TEN-X OR CS GROUP. EACH PARTICIPANT HEREBY RELEASES TEN-X AND CS GROUP AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, BROKERS AND AGENTS (COLLECTIVELY, "REPRESENTATIVES") FROM ANY AND ALL CLAIMS THAT ANY SUCH PARTICIPANT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST TEN-X, CS GROUP OR ANY OF THEIR REPRESENTATIVES FOR ANY DAMAGE

additional information regarding broker/agent participation, and the applicable Property Page for cooperating broker commissions related to a specific Property.

For certain Events, a registered broker/agent may submit Offers on behalf of a buyer identified to Ten-X prior to Offer submission. By submitting an Offer on behalf of a buyer, the broker/agent (i) represents and warrants that the broker/agent has received all buyer authorizations and satisfied all legal requirements necessary to submit Offers on the buyer's behalf, (ii) acknowledges and agrees that any Offer submitted will be binding upon the broker/agent and the buyer identified at registration to the same extent as if the buyer had submitted the Offer, and (iii) agrees to indemnify and hold harmless Ten-X and CS Group from any breach of these representations or warranties.

## **6. GENERAL INFORMATION**

Seller and Ten-X reserve the right to deny, limit, or impose conditions on submitting Offers or access to the Website or any Event at any time, for any reason, including, without limitation, Participant's solvency, credit history, transaction history, and Participation Deposit amounts.

Ten-X may postpone or cancel an Event, rearrange the order or sequence of the Properties in the Event, modify these Terms by posting notice of modification on the Property Page, remove any Property from the Event, or reject any or all Offers.

Ten-X, Sellers and their agents may issue press releases and other public communications regarding the Event, any Property offered or sold during at an Event, and the Participants involved in the Event.

These Terms and the conduct of each Event shall be governed by the laws of Florida except in the case of auction Events involving real property located in California. With respect to auction Events involving real property located in California, these Terms and the conduct of

the Property. If the Reserve Price is not met, Seller is under no obligation to sell the Property; however, Seller may accept a bid that is below the Reserve Price in its sole and absolute discretion.

**Absolute Auction Events.** Properties to be auctioned without a Reserve Price or minimum bid will be listed in an "Absolute Auction" and will be sold to the highest bidder.

**Managed Bid Events.** For Properties to be marketed in a Managed Bid Event, Participants are invited by Ten-X or Seller to submit a non-binding indicative bid ("Indicative Bid") before the Managed Bid Event. In order to submit an Indicative Bid, Participant must complete an Indicative Bid Form posted on the Property Page prior to the auction date. No deposit is required to submit an Indicative Bid; however, Participant registration may be required. Submission and acceptance of an Indicative Bid does not legally bind either Participant or Seller. If Seller decides to proceed with the Managed Bid Event, Seller will review the Indicative Bids for the Property and use them to determine which Participants may participate in the Managed Bid Event, in Seller's sole and absolute discretion.

**Extension of Auction Time.** Ten-X may extend the time for bidding in any auction Event in its sole and absolute discretion.

**Subject to Confirmation.** Seller may designate certain Offers as "Subject To Confirmation" in its sole and absolute discretion, in which case Winning Buyer's purchase is subject to, and contingent upon, Seller or a third party approving the purchase in its sole and absolute discretion within the time period set forth in the Purchase Documents. Winning Buyer will receive a refund of monies deposited if Seller or the third party does not approve the purchase.

## **5. BROKER/AGENT PARTICIPATION**

We encourage real estate broker and agent participation. A cooperating broker commission may be offered for some Properties. Please see the broker registration page for eligibility requirements and



specified for a particular Property, the Transaction Fee will be added to Winning Buyer's Offer amount to establish the total purchase price payable by Winning Buyer. If the Property is anything other than a one to four unit residential property and Participant purchases it from the Seller outside of Ten-X's platform within 180 days after the date Participant acknowledges these Terms, Participant agrees to be responsible to Ten-X for full payment of the Transaction Fee that would have been payable if Participant had purchased the Property through Ten-X's platform.

**Short Sale Properties.** Some Properties involve a sale in which the proceeds may fall short of the balance of debts secured by the Property ("Short Sale"). All Offers for Short Sale Properties are subject to the approval of the applicable lien holders ("Short Sale Lender's Consent"). If Short Sale Lender's Consent is not received, the transaction will be cancelled and the Earnest Money Deposit will be returned to Participant.

**Note Sales/Indirect Property Sales.** Participant must be an "accredited investor" within the meaning of Rule 501(a) of Regulation D of the Securities Act of 1933 ("Accredited Investor"), as amended, to participate in the sale of any Property that consists in whole or part of a promissory note or other note, or any interest in any entity ("Indirect Property"). By participating in any Event for an Indirect Property, or accessing any information relating thereto, Participant represents and warrants that (a) Participant is an Accredited Investor, and that (b) Participant is not relying on, and will not seek the protections afforded by, any federal or state securities law.

#### **4. AUCTION EVENTS**

**Reserve Price.** Except for Properties noted "Absolute Auction" or "Minimum Bid Auction", all Properties in auction Events have a minimum selling price established by Seller ("Reserve Price"). The starting bid is not the Reserve Price. Except where prohibited by law, Ten-X may counter bid on behalf of Seller on any Property up to the amount of the Reserve Price, and no such bid will result in a sale of

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**FORTH HEREIN IS A REASONABLE PRE-ESTIMATE OF THE RESULTING DAMAGES TO TEN-X AND IS NOT A PENALTY OR FORFEITURE.**

**\*Ten-X may operate under different trade names in some states. See [www.ten-x.com/company/legal/licensing](http://www.ten-x.com/company/legal/licensing).**

***These Ten-X Participation Terms were last updated April 22, 2021.***

**Archive of Previous Participation Terms**